APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

September Term, 1981

No. 82-1038

National Labor Relations Board,

Petitioner,

vs.

Hudson Farms, Inc.,

Respondent.

Application for Enforcement of Order of the National Labor Relations Board

JUDGMENT

BEFORE: HEANEY, Circuit Judge, MILLER, Judge, and COLLINSON, Senior District Judge

On July 1, 1982, the Court being fully advised in the premises handed down its opinion granting enforcement of the Board's order.

ON CONSIDERATION WHEREOF it is hereby ordered and adjudged that the said order of the National Labor Relations Board be enforced and that Hudson Farms, Inc., its officers, agents, successors, and assigns, abide by and perform the directions in said order.

Robert D. St. Vrain
Clerk, United States Court of Appeals
for the Eighth Circuit.

Costs taxed in favor of Petitioner:
Cost of reproducing brief: $84.04
Total costs of petitioner for recovery from respondent: $84.04
A True Copy:

Attest: Robert D. St. Vrain
Clerk, U.S. Court of Appeals,
Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 82-1038

National Labor Relations Board,
Petitioner,
v.
Hudson Farms, Inc.,
Respondent.

On Application for Enforcement of an Order of the National Labor Relations Board.

Submitted: June 15, 1982
Filed: July 1, 1982

Before HEANEY, Circuit Judge, MILLER,* Judge, and COLLINSON,** Senior District Judge.

PER CURIAM.

This case is before the Court on the application of

*The HONORABLE JACK R. MILLER, Judge for the United States Court of Customs and Patent Appeals, sitting by designation.

**The HONORABLE WILLIAM R. COLLINSON, Senior District Judge for the United States District Court for the Western District of Missouri, sitting by designation.

the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, 29 U.S.C. §151 *et seq.*, for enforcement of its order issued on September 30, 1981, against Hudson Farms, Inc., 258 NLRB No. 49 (1981). The Board found that Hudson Farms violated Sections 8(a)(5) and (1) of the Act by refusing to bargain with the General Drivers and Helpers Union, Local 823, which had been certified as the bargaining representative for the company's truck drivers and yard workers. It ordered Hudson Farms to cease and desist from refusing to bargain with the Union, or otherwise violating the employees' Section 7 rights, and directed the company to bargain with the Union upon request.

Hudson Farms, an integrated poultry producer, employs truck drivers and yard workers to transport its poultry between independent contract growers, which raise the chickens to market weight, and the company's processing plant. Hudson Farms contends that these employees are "agricultural laborers" who are exempt from the Act's coverage under the meaning of Section 2(3). Accordingly, the company argues that the Board's Bargaining order should be denied enforcement because the Union includes these truck drivers and yard workers who are exempt from the Act's coverage.

The sole question presented here is whether Hudson Farms' truck drivers and yard workers are "employees" or "agricultural laborer[s]" within the meaning of Section 2(3) of the Act. This issue is controlled by *Valmac Industries v. NLRB,* 599 F.2d 246, 248-249 (8th Cir. 1979). In *Valmac Industries v. NLRB, supra,* 599 F.2d at 249, this Court, relying on *Bayside Enterprises, Inc. v. NLRB,* 429 U.S. 298 (1977), held that

employees who transported live poultry from an independent grower's farm to their employers' processing plant were "employees" not "agricultural laborer[s]" under the Act.

Accordingly, on the basis of *Bayside Enterprises, Inc. v. NLRB, supra,* and *Valmac Industries, Inc. v. NLRB, supra,* and the evidence as a whole, we hold that the Board's determination that Hudson Farms' truck drivers and yard workers are "employees," rather than "agricultural laborer[s]," under Section 2(3) of the Act is warranted by the record and has a reasonable basis in law. The Board, therefore, properly determined that Hudson Farms violated Section 8(a)(5) and (1) of the Act, and its order is enforced.

A true copy.

Attest: Robert D. St. Vrain

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX B

258 NLRB No. 49

FJZ
D — 8121
Noel, MO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD

HUDSON FARMS, INC.

and

Case 17 — CA — 10298

GENERAL DRIVERS AND HELPERS
LOCAL NO. 823, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

DECISION AND ORDER

Upon a charge filed on April 14, 1981, by General Drivers and Helpers Local No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Hudson Farms, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint on April 29, 1981, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on February 23, 1981, following a Board election in Case 17 — RC — 9173, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate:[1] and that, commencing on or about April 3, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On May 11, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On May 29, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on June 3, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause. The Union filed a statement in support of the Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Nation-

[1] Official notice is taken of the record in the representation proceeding, Case 17 — RC — 9173, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and regulations, Series 8, as amended. See **LTV Electrosystems, Inc.**, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir., 1968); **Golden Age Beverage Co.**, 167 NLRB 151 (1967), enfd., 415 F.2d 26 (5th Cir. 1969); **Intertype Co. v. Penello**, 269 F.Supp. 573 (D.C. Va. 1967); **Follett Corp.**, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

al Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in response to the Notice To Show Cause, Respondent admits that it had refused the Union's request to recognize and to bargain with it as the exclusive bargaining representative of a unit of Respondent's truck drivers and yard employees. In defense, Respondent contests the certification. Specifically, Respondent argues that the unit employees are agricultural laborers within the meaning of Section 2(3) of the Act, and are therefore exempt from coverage under the Act. The General Counsel asserts that Respondent improperly seeks to relitigate issues which were raised and decided in the representation case. We agree with the General Counsel. A review of the record, including the record in Case 17 — RC — 9173, reveals that Respondent's position was litigated and decided in the representation proceeding. In that proceeding Respondent was given full opportunity to present evidence that the employees sought to be represented were not "employees" within the meaning of Section 2(3) of the Act. The evidence and the legal position of Respondent were considered and evaluated by the Regional Director in his Decision and Direction of Election. The Regional Director concluded that the drivers and yard employees in dispute were not agricultural laborers within the meaning of the Act. Respondent timely filed a request for review of this decision by the Board. On February 10, 1981, the Board telegraphically denied Respondent's Request.

On February 12, 1981, the Union won the election conducted by the Regional Director pursuant to his Decision and Direction of Election. On February 23, 1981, the Regional Director certified the Union as the exclusive bargaining representative of the unit employees.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. The Business of Respondent

Respondent, an Arkansas corporation, is engaged in the production and marketing of live poultry at various facilities including a facility located at Noel, Missouri.

[2] See **Pittsburgh Plate Glass Co. v. N.L.R.B.**, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

In the course and conduct of its business operations within the State of Missouri, Respondent annually purchases goods and services valued in excess of $50,000, directly from sources located outside the State of Missouri. Respondent also annually sells goods and services valued in excess of $50,000 directly to customers located outside the State of Missouri.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in Commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

General Drivers and Helpers Local No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The Unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time truck drivers and yard employees employed by the Employer and headquartered in Noel, Missouri, excluding chicken catchers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On February 12, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 17, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on February 23, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about April 3, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about April 9, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since April 9, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practice Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 *NLRB* 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 *NLRB* 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Hudson Farms, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Drivers and Helpers Local No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time truckdrivers and yard employees employed by the Employer and headquartered in Noel, Missouri, excluding chicken catchers, office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 23, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about April 9, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section

7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hudson Farms, Inc., Noel, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Drivers and Helpers Local No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time truckdrivers and yard employees employed by the Employer and headquartered in Noel, Missouri, excluding chicken catchers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Noel, Missouri, facility copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. September 30, 1981

John H. Fanning, Member

Howard Jenkins, Jr. Member

Don A. Zimmerman, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Drivers and Helpers Local No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time truckdrivers and yard employees employed by the Employer and headquartered in Noel, Missouri, excluding chicken catchers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

HUDSON FARMS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Two Gateway Center, Room 616, Fourth at State, Kansas City, Kansas 66101, Telephone 816-374-4688.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELAIONS BOARD
Noel, Missouri

HUDSON FARMS, INC.[1]
Employer

and

GENERAL DRIVERS AND HELPERS,
LOCAL 823,
affiliated with the INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA
Petitioner

Case No. 17-RC-9173

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

[1] The Employer's name appears as corrected at the hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[2]

---

[2] The Employer is an Arkansas corporation engaged in the production and marketing of live poultry in Missouri, Arkansas and Oklahoma. The Petitioner seeks to represent a unit of truck driving and yard employees. Both the Employer and the Petitioner agree to the appropriateness of such a unit and the record fully supports a finding that these employees have a community of interest regarding their wages, hours and terms and conditions of employment. The parties disagree only as to whether these individuals are employed in agriculture within the meaning of Section 2(3) of the Act. That section provides that the term "employee" shall not include any individual employed as an agricultural laborer. There is currently no collec-

ive bargaining agreement in effect covering these employees.

The Employer buys poultry breeding stock and places it with contract pullet producers and contract breeder producers. Hatching eggs from these producers go to the company-owned hatcheries and are then delivered as day-old hatchery chicks to contract farmers. These contract farmers are provided with feed, medication and broiler service personnel by the Employer. At approximately seven to eight weeks of age, the chicks are transported to a processing plant in Noel, Missouri. The Employer owns the chicks throughout this entire operation.

The individuals in question drive the trucks from the contract farmers' facilities to the processing plant's live-haul lot. Yard employees then weigh the full trailer, deliver it to the processing plant and weigh the empty trailer. There are approximately fifteen truck drivers and two yard employees.

The following quote from **Victor Ryckebosch, Inc.**, 139 NLRB 40 at 44-45 summarizes general Board law applicable herein:

> The congressional standard for determining whether employees are agricultural laborers is set forth in Section 3(f) of the Fair Labor Standards Act (29 U.S.C. Sec. 203(f)). Since 1946, the appropriations acts for the Board have regularly carried a rider which provides that the term "agricultural laborer" shall be defined in accordance with Section 3(f) of the Fair Labor Standards Act. This provision reads in pertinent part as follows:
>
> "Agriculture" includes farming in all its branches and includes . . . the raising of poultry, and practices . . . performed by a farmer or on a farm as an incident to, or in conjunction with, such farming operations . . ."

The Supreme Court stated with respect to this provision in **Farmers Reservoir & Irrigation Co. v. McComb**, 337 U.S. 755, 762-763, "this definition has two distinct branches." The primary meaning, which is admittedly inapposite here, involves actual farming operations such

as the raising of produce from the soil or the raising of poultry. The secondary definition in the Court's words, "includes any practices, which are performed either by a farmer or on a farm, as an incident to or in conjunction with 'such' farming operations, including preparation for market, delivery . . . to market or to carriers for transportation to market." (Ibid.)

Query: Are the conditions of the secondary meaning satisfied with respect to the coop truckdrivers in this case?

The Supreme Court in the **Farmers Reservoir** case, **supra,** specifically pointed out that under the second branch of the statutory definition of agriculture, it is not only necessary that the practices in question be performed "by a farmer or on a farm," but they must also be incidental to "such" farming as is performed under the first branch of the definition. 337 U.S. at 766-767. The Supreme Court's footnote 15 at pages 766-767 expressed its view concerning the second branch of the definition as follows:

> . . . there is the additional requirement that the practices be incidental to "such" farming. Thus, processing on a farm of commodities produced by other farmers is incidental to or in conjunction with the farming operation of the other farmers and not incidental to or in conjunction with the farming operation of the farmer on whose premises the processing is done. Such processing is, therefore, not within the definition of agriculture. **Bowie v. Gonzalez,** 117 F.2d 11 (C.A. 1, 1941).

Because the individuals herein are clearly not engaged in farming within the Supreme Court's primary meaning, it is necessary to determine whether they are engaged in practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations. If the individuals in question are performing work on agricultural products produced on farms other than their own employer's, then their claimed agricultural status must be rejected. **Victor Ryckebosch, Inc., supra** at 45 and cases cited therein in footnote 10. Further, the Board held in that case, under identical facts, that the contract farmer was the "farmer" raising poultry on land in his possession and control and that

All full-time and regular part-time truck drivers and yard employees employed by the Employer and headquartered in Noel, Missouri EXCLUDING chicken catchers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION[3]

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject

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the employer therein, who owned the poultry from cradle to grave, was predominately an investor, a marketer and a shipper of poultry.

I am unable to distinguish that case from the facts herein and accordingly I find that the Employer is not a "farmer" and that the activities of the truck drivers and yard employees in hauling the poultry from the contract growers farms do not cause them to be agricultural laborers within either the primary or secondary definition of agriculture as defined by Section 3(f) of the Fair Labor Standards Act. See also **Valmac Industries, Inc.**, 237 NLRB 992, 994; **Austin J. DeCoster d/b/a DeCoster Egg Farms**, 223 NLRB 884, 886; **Colchester Egg Farms, Inc.**, 214 NLRB 612, 613; **McElrath Poultry Company, Inc.**, 206 NLRB 354, 355; **Jack Frost, Inc.**, 201 NLRB 659, 660. Inasmuch as the truck drivers and yard employees are not employees of the contract growers who are farmers but are employed by the Employer delivering the results of someone else's farming efforts, their functions do not constitute practices which are performed either by a farmer or on a farm incidental to or in conjunction with such farming operations. Accordingly, I find that they are employees within the meaning of the Act.

[3] Since I have concluded that the individuals sought by the petition are employees, within the meaning of the Act, the Employer's Motion to dismiss the petition because it covers agricultural laborers is hereby denied.

to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately before the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by GENERAL DRIVERS AND HELPERS, LOCAL 823, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 *NLRB* 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394

U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned Officer-in-Charge, Subregion, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 616 Two Gateway Center, Fourth at State, Kansas City, Kansas 66101 on or before January 20, 1981.

No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by January 26, 1981.

Dated January 13, 1981
at Kansas City, Kansas

/s/ Thomas C. Hendrix
Regional Director, Region 17

APPENDIX C

NATIONAL LABOR RELATIONS ACT, 29 U.S.C. §152(3)

§152 Definitions:

When used in this subchapter —

(3) The term "employee" shall include any employee and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined. . . .

FAIR LABOR STANDARDS ACT, 29 U.S.C. §203(f)

§203 Definitions:

As used in this chapter —

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including com-

modities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with such farming operations) including preparation for market, delivery to storage or to market or to carriers for transpotation to market. . . .